

THE FACTS

The facts, as presented by the applicants, may be summarised as follows:

The original applicant, Mr. R., was born on .. July 1883 at Schönbaum. His letters to the Commission have been written also on behalf of his wife. He was a pensioner residing at N.. However, by letter of 20 May 1970, his wife, Mrs. R., born on .. April 1898 at Klein-Plehnendorf and residing with her husband at N., informed the Commission's Secretary that her husband had died on .. April 1970 and that she wished to continue the application under her own name.

It appears that in 1964 their son, R., born in 1923, was extradited by Austria to the Federal Republic of Germany. Since that date he has stayed at the mental hospital of B., by virtue of Article 42 (b) of the Penal Code which holds that a person, who has committed a punishable act in a state of irresponsibility or of diminished responsibility may be confined by the Court to an institution for cure or care.

On .. April 1966 the applicant and his wife sent a petition to the Minister of Justice of the Land Nordrhein/Westfalen, to request a transfer of their son to a mental hospital nearer to their place of residence, at N.. They could not visit their son where he was now, on account of their age and bad state of health (Mr. R. was 83 at the time, and his wife 68) and their modest financial situation. The petition was passed on to the competent court, the Regional Court (Landgericht) at Düsseldorf, but remained without reply.

After various other, unsuccessful attempts, they instructed a Stuttgart lawyer to take up their case. On .. November 1967 he petitioned the Regional Court at Düsseldorf for an order to transfer R.. Jnr. to the mental hospital at K., or any other hospital nearer to N., so that his parents could visit him.

On 25 July 1968 the applicant and his wife were informed of a possibility of the transfer of their son to the mental hospital at W., within easy travelling distance from N.. On 11 September 1968, however, the hospital informed them that it would not take their son.

From information gathered in 1969 by their lawyer, it appears that the real issue was a medical dispute. Whereas the applicants and the Director of the W. Hospital were of the opinion that regular contacts with his parents would be beneficial to R. Jnr., the authorities of the B. Hospital seemed to hold the contrary opinion. It appears that the latter view was adopted by the Land authorities and has led to the decision not to transfer R. Jnr.

It appears from the dossier, as submitted by the applicant, that the Regional Court of Düsseldorf has not taken a final decision on the two petitions of .. April 1966 and of .. November 1967.

The applicant does not invoke any particular provision of the Convention. The substance of the complaint is that the present situation amounts to an infringement upon the right to respect for family life.

THE LAW

The Commission accepts the continuation of the original applicant's complaint by his widow, as the applicant had, before his death, always written to the Commission on behalf also of his wife and as it is clear that they had a joint interest in the case.

The applicant had complained of the failure of the Regional Court at Düsseldorf to take a decision on petition of his wife and himself to

order the transfer of their son from the mental hospital of B. to a mental hospital nearer to her place of residence.

However, under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case, neither the applicant, nor subsequently his widow, has shown that they had taken the necessary steps for securing a decision from the Regional Court at Düsseldorf on their petition, for example by lodging a hierarchical appeal (Dienstaufsichtbeschwerde) to the President of the competent Court of Appeal. He can therefore not be considered to have exhausted the remedies available to him under German law. Moreover, an examination of the case, as it has been submitted, including an examination made ex officio, does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and the application must in this respect be rejected under Article 27, paragraph (2) (Art. 27-2), of the Convention.

For this reason, the Commission DECLARES THIS APPLICATION INADMISSIBLE.